IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5740 OF 1997

1. Shri Kaluram Hawaba Potale,
Age about 52 years,
Occupation-Agriculturist

2. Shri Shahaji Hawaba Potale,
Age about 48 years, Occup.Agril.

3. Shri Shivaji Hawaba Potale,
Age about 46 years, Occup.Agril.

4. Shri Maruti Hawaba Potale,
Age about 42 years, Occup.Agril. .. Petitioners

All residing at Village-Pimpalgaon,
Taluka-Khed, Dist.Pune.

v/s.

1. The State of Maharashtra
(Summons to be served upon the
Collector, Pune Collectorate,
Pune-1)

2. The Special Land Acquisition Officer
No.24, Collector Office Compound,
Pune-1.

3. The District Resettlement Officer,
Pune Collector, Pune Collector
Office Compound.

4. Smt.Vithabai Hawaba Potale,
Age about 65 years, Occup.Agril.

5. Sou.Shalubai Kisan Mohite, .. Respondents
Age about 37 Years,
Occupation-Agriculturist,
(Respondent Nos.4,5 & 6 R/o.
Village- Pimpalgaon, Taluka
Khed, Dist.Pune.

Names of Respondent Nos.4 & 5 have
been deleted as per order of the
Hon'ble Court passed on 19.2.98.

Mr.S.V.Pitre for the petitioners.

Mr.V.S.Gokhale, A.G.P. for the respondent Nos.1 to
3.

ALONGWITH

WRIT PETITION NO.5307 OF 1998

1. Devram Laxman Karale,

2. Dnyaneshwar Laxman Karale,

3. Eknath Laxman Karale,

4. Dattatraya Laxman Karale, .. Petitioners

All residing at Pimpalgaon,
Taluka-Khed, Dist.Pune.
No.3 for himself and power
of attorney holder of
petitioner Nos.1,2 and 4.

v/s.

1. The State of Maharashtra
(Summons to be served upon the
Collector, Pune Collectorate,
Pune-1)

2. The Special Land Acquisition Officer
No.24, Collector Office Compound,
Pune-1.

3. The District Resettlement Officer,
Pune Collector, Pune Collector
Office Compound.

4. Sou.Hausabai Umaji Pachpute

5. Sou.Indubai Tukaram Mohite

6. Sou.Janabai Bajaba Mangare

7. Sou.Subhadrabai Tukaram Sakore

8. Sou.Leelabai Bhausaheb Shivle .. Respondents

(Respondent Nos.4 to 8 resident
of village Pimpalgaon, Tal.Khed,
District-Pune)

Mr.V.S.Gokhale, A.G.P. for the respondent Nos.1 to 3.

CORAM : R.M.S.KHANDEPARKAR AND V.M.KANADE, JJ.

DATED : 18th August, 2005

ORAL JUDGMENT (Per R.M.S.Khandeparkar, J.)

Since common questions of law and facts arise in both these petitions, they were heard together and are being disposed of by this common judgment.

2. In both these petitions, the petitioners seek to challenge the notification dated 7th December, 1988 issued under section 4(1) of the Land Acquisition Act and notification dated 11th January, 1990 issued under section 6 of the said Act being bad-in-law on the ground that the respondents could not have proceeded to acquire the land in question for the resettlement of the project affected persons in exercise of the powers under the Maharashtra Resettlement Act, 1976 since the individual holding of each of the petitioners was less than 8 acres of land.

3. The fact that the properties sought to be acquired belong to the petitioners is not in dispute. It is also not in dispute that the petitioners do not have any registered partition deed in respect of the respective properties allotting separate shares to the petitioners in such properties with physical division thereof in loco. The only grievance which is sought to be made on behalf of the petitioners is that there has been written partition amongst the parties allotting separate share in the respective properties to each

of the petitioners and the same discloses that the individual holding of each of the petitioners was less than 8 acres of land and therefore, considering the provisions of the law in force at the relevant time, the land of the petitioners could not have been subjected to acquisition proceedings.

4. There is no dispute as regards the proposition of law that in case of individual holding being less than 8 acres of land, it could not have been subjected to acquisition for the purpose of distribution thereof to the project affected persons in terms of the provisions of the Maharashtra Project Affected Persons Rehabilitation Act. The point for consideration, therefore, which arises in both these matters is whether the family arrangement entered into between the parties agreeing for separate share in the property to each of the petitioners or their predecessors, can it be said to be valid and lawful partition for the purpose of consideration as to whether each of the petitioners individually and independently held less than 8 acres of land and that, therefore, it could not have been subjected to the acquisition proceedings? The learned advocate for the petitioners in that regard has sought to rely upon the unreported decision of this court in the matter of Shri Dinkar Narayan Dhamal and others v. The State of Maharashtra and others in writ petition No.4140 of 2000 delivered on

14th August, 2000 and has submitted that taking into consideration the revenue records, it could have been well ascertained by the competent authorities that the individual holding of each of the petitioners was less than 8 acres of land and therefore, their land could not have been acquired.

5. As regards the point relating to unregistered partition deed sought to be raised in the matter, in fact, the same is well settled in view of the decision of the Full Bench of this court in Ganpat Balwant Pawar v. Special Land Acquisition Officer No.7, reported in AIR 1984 Bombay 382 and further explained by the Division Bench in Shivgonda Balgonda Patil and others v. The Director of Resettlement and others, reported in AIR 1992 Bombay 72. In Ganpat Balwant Pawar's case, the Full Bench did not find favour with the contention of the petitioners before the Full Bench that there was any partition between the members of the joint family concerned or that each person must be considered as having a separate holding for the purpose of the Maharashtra Resettlement of Project Displaced Persons Act, 1976 and held that, "there was only a single khata of all the petitioners together though against the name of each petitioner, it was mentioned that he was holding a 1/4th share in the lands in the same khata." and there was no evidence of any partition as such. In that case, the Full

Bench was sought to be persuaded that although the total holding of the joint family was large, subsequently each of the petitioners therein was allotted under family arrangement only a portion of the land and as a result, each person was cultivating his land separately and independently and therefore, ought to have been considered as having an individual and separate holding. However, the claim of the petitioner therein was rejected.

6. In Shivgonda Balgonda's case, it was the contention of the petitioner therein that on the death of Balgonda in 1958, there was a partition of land between the first petitioner and his brothers and in that connection reliance was sought to be placed on mutation entry made on 7.7.78 in the revenue records in relation to the property. The said mutation entry disclosed that on the application of the heirs of the Khatedar Balgaonda Patil, the names of the persons which were recorded therein were specified as the heirs of the deceased Balgaonda. The entry further set out the shares in which the various lands were being cultivated by the sons only. With reference to that, the Division Bench observed that, "We fail to see how this mutation entry can be said to record any partition effected between the sons of the deceased Balgonda Patil. At the highest the entry in the Khata records that the family arrangement under which the

persons mentioned therein were having different shares in the land under cultivation as set out in the khata." It was further ruled that, "It is well settled that on the death of a male Hindu who is a co-parcener in a joint family there is no automatic partition of his share in the joint family properties amongst his male heirs. But if the deceased has left him surviving a female heir as specified in section 6, a notional partition is deemed to have taken place in the joint family property at the time of the death of the deceased for the purpose of ascertaining the share of the deceased in the joint family properties which comes to the share of the female heirs."

7. The law is very clear to the effect that the family arrangement describing the shares of the members of the family in a property cannot ipso facto amount to lawful partition of the property nor that by itself can lead to the conclusion that each of the member of the family are holding the land separately in terms of the shares described in such family arrangement. Whether a property which is owned by different persons is in fact partitioned by metes and bounds and is accordingly enjoyed separately by each of the owner thereof according to his share has to be ascertained based on a lawful partition executed between the persons owning such property. A lawful partition has necessarily to be

a duly registered partition in relation to immovable property. In the absence of such partition, mere oral or written arrangement entered into between the parties would not be a conclusive evidence regarding such partition for the purpose of ascertaining whether each individual owns the land less than 8 acres, while dealing with the matter for the acquisition of land for the purpose of distribution thereof under the Maharashtra Project Affected Persons Rehabilitation Act, 1986.

8. It is also well settled that revenue records do not create any title in favour of the person in whose favour revenue records stands in relation to a particular property. The revenue records are essentially to identify the liability regarding the revenue to the Government. Being so, merely because different shares are recorded in the revenue records or in the mutation entry in such records which may reveal about the obligation of each such individual to pay the revenue to the Government in accordance with such shares, however, such entry by itself would not lead to the conclusion that the property is being lawfully partitioned amongst such persons whose names figure in such records.

9. The attention was sought to be drawn to the reference made by the Division Bench in Dinkar Narayan Dhamal's case to the order passed by the

Apex Court pursuant to the circular dated 20th June, 1998. At the outset it is to be noted that we have also perused the order passed by the Apex Court. In the said order, the Apex Court after referring to the said circular had directed the Commissioner of Pune to examine the individual case afresh bearing in mind the said circular. The said direction, obviously, was given in the peculiar facts of the case without laying down any law as such in relation to the said circular. Besides, it was nobody's case before the Apex Court that the individual holdings of the persons before the Apex Court were pursuant to any family arrangement as such. It is well settled law that the observations made in a judgment passed either by the Apex Court or by the High Court are not to be understood independently and ignoring the context in which the observations are made. Merely because in a peculiar set of facts a direction is issued for reconsideration of the cases bearing in mind the circular dated 20th June, 1998 that by itself cannot enure to the benefit of the petitioners or the persons similarly situated to get similar direction in their case particularly when the petitioners are unable to disclose that their claim regarding the individual independent land holding being less than 8 acres is, prima facie, established by proper lawful documentary evidence.

10. With utmost respect we are unable to persuade

ourselves to take the view similar to one taken by the Division Bench in Dinkar Narayan Dhamal's case, more particularly, in view of the decision of the Full Bench in Ganpat Balwant Pawar's case followed by the Division Bench in Shivgonda Balgonda Patil's case, which decisions are binding upon this court.

11. For the reasons stated above, the petitions fail and, therefore, the same are dismissed with no order as to costs. Rule is discharged.

(R.M.S.KHANDEPARKAR, J.)

(V.M.KANADE, J.)